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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Chih An International, Inc.

Serial No. 76561382

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McKee, LLP for Chih An International, Inc.

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Before Seeherman, Hairston and Walsh, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Chih An International, Inc. has filed an application
to register the mark CROSS for "golf clubs."¹

Registration has been finally refused under Section
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the
ground that applicant's mark, when applied to the
identified goods, so resembles the mark GOLFCROSS for "golf

¹ Serial No. 76561382, filed on November 21, 2003, which alleges
a bona fide intention to use the mark in commerce.

clubs,"² as to be likely to cause confusion or mistake, or to deceive.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn first to a consideration of the goods. Both

² Registration No. 2,413,608 issued December 19, 2000. The registration covers goods and services in classes 25, 28, and 41. The identification of goods in class 28 reads "golf balls, golf clubs, target nets for use in a golf-type game." It is clear from the examining attorney's Office actions and brief that the refusal to register is based only on "golf clubs."

applicant's and registrant's goods, as identified, are "golf clubs." Applicant argues that there are differences in the nature of the goods, trade channels, and purchasers. Specifically, applicant argues that its golf clubs will be used in playing conventional golf whereas registrant's golf clubs are used in a golf-type game, known as "GolfCross," where a special oval-shaped ball is hit into a target net. Further, applicant maintains that "GolfCross" is played in New Zealand and not in the United States, resulting in different trade channels and purchasers. Finally, applicant argues that it appears that the registrant is not selling golf clubs bearing the mark GOLFCROSS in the United States because applicant conducted a "Google" search which did not return any "hits" for retailers in the United States selling goods under the mark GOLFCROSS. Applicant has submitted an Internet printout from what appears to be registrant's website explaining the game of "GolfCross."

There is a fundamental problem with applicant's argument. While we recognize that the "target nets" in the cited registration are identified as "for use in a golf-type game," the "golf clubs" are not limited in this manner. In other words, the "golf clubs" are not limited for use in the game of "GolfCross" as argued by applicant. It is well established that the issue of likelihood of

confusion must be determined on the basis of the goods as they are set forth in the involved application and the cited registration, and not in light of what such goods are shown or asserted to actually be. See e.g. *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987) [It is well settled that in Board proceedings, "the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services in [the cited] registration, rather than what the evidence shows the goods and/or services to be"].

In the absence of any limitations in the cited registration with respect to "golf clubs," we must presume that such golf clubs are for use in conventional golf. Thus, for purposes of our likelihood of confusion analysis, the goods are identical. Further, in view of the identity of the goods, we must presume that such goods would be sold to the same classes of purchasers, namely, professional and amateur golfers, through the same trade channels, such as

golf pro shops and sporting goods stores.³ Moreover, even if we were to accept the limitation urged by applicant, that is, that the golf clubs in the cited registration are for use in the game of "GolfCross," we note that the Internet printout that explains the game contains the following question and answer:

Can I use my golf clubs for GolfCross®?

Yes, exactly the same clubs are used but you won't need a putter.

Thus, it would appear from the foregoing that the golf clubs in the cited registration are actually conventional golf clubs. In any event, if the same or similar marks are used on applicant's and registrant's identified goods, confusion as to source or sponsorship of the goods is likely.

Turning then to the marks, we note that applicant does not contest, in its brief, that the marks are similar. Rather, applicant argues that marks which include the term CROSS for golf-related products are weak marks and therefore entitled to a narrow scope of protection. Applicant submitted copies of four third-party

³ We must presume that the registered mark is in "use in commerce" (i.e., used in commerce with or in the United States) on golf clubs. If applicant believes that the mark is not in use in commerce on golf clubs, applicant may wish to consider filing a petition for cancellation of the registration with respect to such goods on the ground of abandonment.

registrations that include the word CROSS, namely CROSSCAP for inter alia, golf clubs and golf balls; CROSS LINE for golf grips; CROSS COUNTRY for golf bags and golf bag covers; and CROSS GRIP for an auxiliary grip for golf clubs. Because of the numerous "uses" of marks that include the word CROSS, applicant argues that the public distinguishes the various CROSS marks.

With respect to the marks, we must determine whether applicant's mark and registrant's mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. Although the marks must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Furthermore, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser,

who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Further, when the goods of the parties are identical as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines."

Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

When we compare the marks CROSS and GOLFCROSS in their entireties, we find that they are similar in sound, appearance, connotation and commercial impression. While undoubtedly the presence of the word GOLF in the registered mark is a difference, it does not significantly change the sound, appearance, connotation or commercial impression of the marks. Because the word GOLF is highly descriptive, if not generic for golf clubs, this word is entitled to little weight in our likelihood of confusion analysis. Both marks are dominated by the word CROSS and the mere addition of the word GOLF in registrant's mark does not make the marks dissimilar. *Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419 (CCPA 1977) [CALIFORNIA CONCEPT and surfer design is likely to be confused with CONCEPT for hair care products].

The existence of four third-party registrations apparently held by different entities containing the word CROSS does not change the result herein. These registrations are not evidence that the marks which are shown therein are in use or that the public is familiar with them. *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973). Nor can such registrations justify the registration of a confusingly similar mark. Also, we note that none of the marks in the third-party registrations is as similar to the cited mark as is applicant's mark.

We conclude that persons familiar with registrant's golf clubs offered under the mark GOLFCROSS would be likely to believe, upon encountering applicant's mark CROSS for identical goods, that applicant's goods originated with or are somehow associated with or sponsored by the same entity.

Decision: The refusal to register under Section 2(d) is affirmed.